

Appln No. 10/687,290

Response to Office Action mailed February 27, 2006

### **REMARKS/ARGUMENTS**

The Office Action of February 27, 2006 has been carefully reviewed and this paper is Applicants' response thereto. Claims 1-11, 13-21, 23, 28-29, 32, 37-38 and 43-46 are pending in the application. Claims 12, 22, 24-27, 30-31, 33-36 and 39-42 are cancelled. Claims 1, 13-18, 23, 28-29, 32 and 37-38 are amended. Claims 43-46 are new. Claims 15-18 were rejected under 35 U.S.C. § 112 as being indefinite. Claims 1-3, 5, 6, 8, 10, 13-19, 23-27, 30, 33-36 39 and 42 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,782,292 to Whitehurst (Whitehurst). Claims 1, 4, 7, 9, 14, 20, 31 and 40-41 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,529,774 to Greene (Greene). Claims 11 and 21 were rejected under 35 U.S.C. § 103(a) as being obvious over Greene. Claims 12, 22, 28-29, 32 and 37-38 were objected as depending from rejected claims but were deemed allowable if rewritten in independent form including all the limitations of any intervening claims. In response, Applicants respectfully traverse the rejections in view of the above amendments and the following remarks.

### **Allowable Claims**

As an initial matter, Applicants would like to express their appreciation for the indication of allowable subject matter. Regarding the claims deemed allowable, Applicants have amended the claims as follows:

The features of claim 12 have been incorporated into claim 1 and claim 12 has been cancelled.

The features of claim 22 have been incorporated into claim 14 and claim 22 has been cancelled.

Claims 28, 29, 32, 37 and 38 have been rewritten in independent form.

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**Cancelled Claims**

Claims 24-27, 30-31, 33-36 and 39-42 are cancelled by this response, thus the rejection of these claims is considered moot.

**Rejection under 35 U.S.C. §112**

Claims 15-18 were rejected under 35 U.S.C. § 112 as being indefinite. While not agreeing that these claims were indefinite, to expedite prosecution claims 15-18 have been amended and now positively recite items before specifying their use.

Accordingly, withdrawal of this ground of rejection is respectfully requested.

**Rejection under 35 U.S.C. §102(e) – Whitehurst or Greene**

Claims 1-10, 13-20, 23-27, 30-31, 33-36, 39-42 were rejected under 35 U.S.C. § 102(e) as being anticipated by either Whitehurst or Greene. Applicants reserve the right to address whether Whitehurst or Greene may properly be considered prior art. As noted above, claims 24-27, 30-31, 33-36 and 39-42 have been cancelled, thus the rejection of these claims is considered moot.

Independent claims 1 and 14 have been amended to incorporate the features of claims 12 and 22, respectively. Therefore, claims 1 and 14 are allowable over the references of record for at least the reasons that claims 12 and 22 were deemed allowable.

Claims 2-10 and 13 depend from independent claim 1 and, therefore, are allowable for the reasons supporting the allowability of claim 1 and for the additional features recited therein.

Claims 15-20 and 23 depend from independent claim 14 and, therefore, are allowable for the reasons supporting the allowability of claim 14 and for the additional features recited therein.

Accordingly, as all rejections under 35 U.S.C. §102(e) have been addressed, withdrawal of this ground of rejection is respectfully requested.

**Rejections under 35 U.S.C. §103 - Greene**

Claims 11 and 21 were rejected under 35 USC §103(a) as being obvious over Greene. Claims 1 and 14, from which these claims respectively depend, have been amended and are believed to be in allowable condition. Therefore, claims 11 and 21 are allowable for the reasons

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supporting the allowability of independent claims 1 and 14, from which they respectively depend, and for the additional features recited therein.

Accordingly, withdrawal of this ground of rejection is respectfully requested.

#### New Claims

Claims 43-46 are new. Independent claim 43 is similar to original claim 1 and independent claim 45 is similar to original claim 14, thus the rejection of claims 1 and 14 will be addressed with respect to the new claims 43 and 44.

Claim 43 recites the feature of "in response to the activating in (d), preventing the therapy device from delivering therapy to the patient for a predetermined time period immediately after the therapy device has been activated." The Office Action suggested that claim 1 was anticipated by Whitehurst and Green, pointing to portions of Whitehurst and Greene that show a period of delay between of therapy. The cited portions of Whitehurst and Greene, however, fail to provide any disclosure or suggestion that therapy delivery should be delayed in response to activation of the therapy device and that the delay takes place immediately after the activating. Instead, Whitehurst and Greene merely disclose that a period of delay can be provided between distinct deliveries of therapy. Accordingly, as the references of record fail to disclose or suggest all the features of claim 43, claim 43 is patentable over the references of record.

Claim 45 includes a feature similar to the feature discussed above with respect to claim 43 and, therefore, is patentable over the references of record for the reasons discussed above with respect to claim 43 and for the additional features recited therein.

Claims 44 and 46 depend from claims 43 and 45, respectively, and are in condition for allowance for at least the reasons discussed above with respect to claim 43 and 45, and for the additional features recited therein.

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**CONCLUSION**

All rejections having been addressed, Applicants respectfully submit that the instant application is in condition for allowance, and respectfully solicit prompt notification of the same. Should the Examiner have any questions, the Examiner is invited to contact the undersigned at the number set forth below.

Respectfully submitted,

Dated: May 26, 2006

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